

ATTACHMENT 10

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

IN RE: DA VINCI SURGICAL ROBOT) Lead Case No.

ANTITRUST LITIGATION) 3:21-cv-03825-VC

_____)

THIS DOCUMENT RELATES TO:) Case No.

ALL CASES) 3:21-cv-03496-VC

_____)

SURGICAL INSTRUMENT SERVICE) **HIGHLY CONFIDENTIAL**

COMPANY, INC.,) **ATTORNEYS' EYES ONLY**

Plaintiff,)

vs.)

INTUITIVE SURGICAL, INC.,)

Defendant.)

_____)

RULE 30(b)(6) VIDEOTAPED DEPOSITION OF INTUITIVE
SURGICAL, INC., TESTIMONY OF MARSHALL MOHR

TAKEN NOVEMBER 7, 2022

REPORTED REMOTELY BY:

ANDREA L. CHECK, CSR No. 748, RPR, CRR

Notary Public

1 THE RULE 30(b)(6) VIDEOTAPED DEPOSITION OF
2 INTUITIVE SURGICAL, INC., TESTIMONY OF MARSHALL MOHR,
3 was taken on behalf of the Plaintiffs via remote
4 videoconference, commencing at 9:07 a.m., PST, on
5 November 7, 2022, before Andrea L. Check, Certified
6 Shorthand Reporter and Notary Public within and for the
7 State of Idaho, in the above-entitled matter.

8 APPEARANCES:

9 For the Plaintiffs:

10 (Present Remotely)

11 Boni, Zack & Snyder, LLC

12 BY MR. JOSHUA D. SNYDER, ESQ.

13 & MR. JOHN E. SINDONI, ESQ.

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17 For the Plaintiff Surgical Instrument Service Company,
18 Inc.:

19 (Present Remotely)

20 Haley Guiliano, LLP

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A P P E A R A N C E S (Continued)

For the Defendants:

(Present Remotely)

Covington & Burling, LLP

BY MS. KATHRYN ELIZABETH CAHOY, ESQ.

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Also Present Remotely:

Michael Barankovich, Videographer

Stephen Sherry

1 A. I am.

2 Q. And what is usage-based pricing?

3 A. Usage-based pricing involves placing a system
4 with a customer where we don't charge for that system up
5 front. We do enter into a contract for the use and
6 license of that system. We identify a targeted number
7 of procedures that will be performed, and then we charge
8 the customer for that system or we charge them a use fee
9 each time they use it for a procedure.

10 Q. And when you referred to "systems," did you
11 mean to include da Vinci robots?

12 A. da Vinci robots and Ion systems.

13 Q. da Vinci and Ion.

14 Is usage-based pricing more prevalent for the
15 Ion versus da Vinci?

16 A. I'm not sure where -- what the percentages are
17 today, so I don't know. We -- I don't mind telling you
18 that we began the program with da Vinci because Ion was
19 not yet in the market.

20 Q. And, approximately, when did you begin -- did
21 Intuitive begin the usage-based pricing program?

22 A. I don't know the specific date. I believe it
23 was, approximately, five years ago or so.

24 Q. Okay. Thanks.

25 (Exhibit 233 marked.)

1 amount of usage-based arrangements used by Intuitive
2 Surgical since the 10-K issued?

3 A. The proportion of usage-based placements has
4 been growing faster than the whole -- than all of the
5 placements. So, yes, I would -- "uptick" is a vague
6 word. I would just say that it's increased as a
7 proportion of the total install base.

8 Q. Are you aware of any reports generated by
9 Intuitive Surgical that track usage-based pricing?

10 MS. CAHOY: Objection to form.

11 THE WITNESS: We monitor usage-based system
12 activity closely. We watch how many procedures were
13 performed. I don't recall that there is a schedule or a
14 form that articulates the charge by system. Having said
15 that, it's all contractually documented.

16 Q. (BY MR. SNYDER) Mr. Mohr, can you please look
17 at the sentence that precedes the one we just read.

18 A. Could you read the sentence, just so I make
19 sure --

20 Q. Sure. "We generally set operating lease and
21 usage-based pricing at a modest premium relative to
22 purchased systems reflecting the time value of money
23 and, in the case of usage-based arrangements, the risk
24 that system utilization may fall short of anticipated
25 levels."

REPORTER'S CERTIFICATE

I, ANDREA L. CHECK, CSR No. 748, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken
before me at the time and place therein set forth, at
which time the witness was put under oath by me;

That the testimony and all objections made
were recorded stenographically by me and transcribed by
me or under my direction;

That the foregoing is a true and correct
record of all testimony given, to the best of my
ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal
this 17th day of November, 2022.

Andrea Check

ANDREA L. CHECK, CSR No. 748, RPR, CRR

Notary Public

P.O. Box 2636

Boise, Idaho 83701-2636

My Commission expires July 20, 2028.